

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

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The Secretary, United States Department of)	
Housing and Urban Development, on behalf of)	
John Orth, Robert Cronk, P. Joyce Ordonio, and)	
Sandy Schlemmer,)	
)	
Charging Party,)	FHEO No. 09-04-0551-8
)	FHEO No. 09-03-1028-8
v.)	FHEO No. 09-03-1027-8
)	FHEO No. 09-03-1022-8
Frey Development Corp., Gerald Garapich AIA,)	
LLC, and Dennis Bonds,)	
)	
Respondents.)	
_____)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about September 17, 2003, Complainants Robert Cronk, P. Joyce Ordonio, and Sandy Schlemmer, aggrieved persons, filed a timely verified complaint with the U.S. Department of HUD (HUD). On or about March 18, 2004, Complainant John Orth, an aggrieved person, filed a timely verified complaint with HUD. All four Complainants are alleging that the Respondents, Frey Development Corp., Gerald Garapich, AIA, LLC, and Dennis Bonds violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 et seq. (Act), based on disability discrimination, by failing to design and construct multifamily dwellings intended for first occupancy after March 13, 1991, in a manner required by the Act, 42 U.S.C. Section 3604(f)(3)(C).

The Act authorizes the issuance of a charge of discrimination on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. Section 3610(g)(1) and (2).

By Determination of Reasonable Cause dated July 22, 2005, the Region IX Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice based on disability has occurred in these cases, and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and the aforementioned Determination of Reasonable Cause, Respondents Frey Development Corp., Gerald Garapich, AIA, LLC, and Dennis Bonds are charged with discriminating against Complainants, John Orth, Robert Cronk, P. Joyce Ordonio, and Sandy Schlemmer, aggrieved persons, based on disability, in violation of Section 3604(f):

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person, a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or any person associated with that person. 42 U.S.C. Section 3604(f)(2).
2. For purposes of Section 3604(f)(2), discrimination includes a failure to design and construct covered multifamily dwellings intended for first occupancy after March 13, 1991, in such a manner that:
 - a) the public use and common use portions of such dwellings are readily accessible to and usable by disabled persons;
 - b) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and,
 - c) all premises within such dwellings contain the following features of adaptive design: i) an accessible route into and through the dwelling; ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; iii) reinforcements in bathroom walls to allow later installation of grab bars; and iv) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. §3604(f)(3)(C).

3. As used in Section 3604(f)(3)(C) of the Act, “covered multifamily dwellings” are:
 - a) buildings consisting of four or more units if such buildings have one or more elevators; and
 - b) ground floor units in other buildings consisting of four or more units. 42 U.S.C. §3604(f)(7).
4. The subject property is a condominium complex located at 5751 E. Hacienda Ave., Las Vegas, Nevada, 89122 (hereafter the “subject property”). It contains twelve buildings, one of which is a clubhouse attached to five ground floor units. There are a total of ninety-three ground floor units. Each unit is individually owned.
5. The portions of the subject property covered by the Act are as follows:
 - a) ninety-three ground floor units; and
 - b) the public and common use areas, including the laundry and parking areas.
6. In or about 1998, the occupancy permits were issued for the covered units at the subject property.
7. All of the one-bedroom and two-bedroom units at the subject property have the same floor plan and all Complainants own ground floor units covered under the Act.
8. Since in or about 1998, Complainant John Orth owned and resided in unit 134 at the subject property. He is mobility-impaired and disabled under the Act. Mr. Orth’s disability has significantly increased over the years since 2002.
9. Mr. Orth has difficulty gaining access to his unit because the route to his unit is not accessible due to the slope of the path in front of his unit. Mr. Orth is the president of the homeowner’s association; however, residents in wheelchairs cannot visit him, because the route to his unit is inaccessible to wheelchair users.
10. From 1998 to September 2004, Complainant Robert Cronk owned and resided in unit 191 at the subject property. He is mobility-impaired and has used a wheelchair since 2003. Mr. Cronk is disabled under the Act.
11. Since in or about 2003, Mr. Cronk sustained falls from his wheelchair on his way to his mailbox because the route is inaccessible. He also had problems maneuvering his wheelchair in his kitchen and bathroom. As a result of these problems Mr. Cronk was compelled to move from the subject property.

12. In or about 2001, Complainant P. Joyce Ordonio purchased unit 166 at the subject property for her parents. Ms. Ordonio's mother uses a wheelchair because she is mobility-impaired and disabled under the Act. The bathroom did not provide enough clear floor space for her to maneuver around in her wheelchair. This required Ms. Ordonio's father to assist her mother every time she had to use the bathroom.
13. In or about April of 2004, Ms. Ordonio had to move her mother to a nursing home because her father's health started to decline and he was unable to continue assisting her mother in the bathroom.
14. Since in or about 1998, Complainant Sandy Schlemmer has owned and resided in unit 117 at the subject property. Ms. Schlemmer is mobility-impaired and disabled under the Act. Her disability is getting worse as she ages.
15. Ms. Schlemmer has sustained several falls because many of the common areas of the subject property are inaccessible, including the route from her unit to the parking area.
16. At all relevant times, Respondent Frey Development Corporation was the builder of the subject property.
17. At all relevant times, Respondent Gerald Garapich, AIA, LLC, was the architectural firm responsible for the design of the subject property.
18. At all relevant times, Respondent Dennis Bonds was the architect for the subject property.
19. At all relevant times, Respondents are jointly responsible for the design and construction of the subject property.
20. On or around June 30, 2004, and March 21, 2005, HUD evaluated the accessibility/adaptability of the common areas and covered ground floor dwelling units of the subject property. HUD found that the common areas and certain dwelling units were not built in accordance with the design and construction requirements of the Fair Housing Act.
21. Respondents designed and constructed the subject property in such a manner that the public and common use portions are not readily accessible to and usable by disabled persons, as required by Section 804(f)(3)(C)(i) of the Act. The list of violations includes, but is not limited to, the following: a) inaccessible routes to many ground floor units that have running slopes greater than 1:20 (5%) and do

- not have ramps; b) inaccessible pedestrian routes that are narrower than 36" wide; c) an inaccessible route to units 114 and 115 that is 33 ½" wide at the base of the staircase to the upper unit; d) an inaccessible curb ramp near the pedestrian gate at East Hacienda Avenue that has a running slope of 12.3%; e) in both of the restrooms serving the club house and swimming pool, the far edge of the toilet paper dispenser is not within reach of the toilet, the flush control for the toilet in the men's restroom is on the narrow side of the toilet; the showers in both restrooms are not the correct size and their seats are not the full depth of the shower; f) in the fitness room, the width between two pieces of equipment is only 27" and there is no accessible route to either piece of equipment; g) the ramp into the club house is 64.5 feet long in a single, straight run; h) there is no posted sign at the accessible parking space near units 102 and 103; i) there is no access aisle adjacent to the accessible parking space in front of unit 140; j) at the mailboxes, the top three rows of keyholes are too high for people using wheelchairs to be able to reach to get their mail; k) in the club house kitchen, the sink is located in the corner at an intersection of a run of cabinets and the bar-counter is in an area that is 17 ¾" wide; the sink has a base cabinet under it; and l) several exterior entrance doors to ground floor units have knob hardware that are not operable without tight pinching, twisting or grasping.
22. Respondents designed and constructed the subject property in such a manner that the premises within many covered multifamily dwelling units do not contain required features of adaptable design, including for example: a) kitchens are U-shaped and do not provide a turning radius for wheelchair users; b) the bathrooms are such that an individual in a wheelchair cannot maneuver about the space; and c) the centerline of the restroom toilets are 14 ½" from the sidewall and clear floor space is not provided.
 23. By failing to design and construct the subject property in accordance with Section 804(f)(3)(C) of the Act, Respondents discriminated against the Complainants in the terms, conditions or privileges of sale or rental of a dwelling, and in the provisions of services and facilities in connection with such dwelling, because of their disability. 42 U.S.C. Section 3604 (f)(2).
 24. Because of Respondents' discriminatory conduct, Complainants have suffered damages, including but not limited to, emotional distress, inconvenience, pain and suffering and loss of an important housing opportunity. Mr. Orth has difficulty walking and maintaining his balance on the inaccessible route to his unit and he cannot have wheelchair users visit him in his unit. Mr. Cronk fell out of his wheelchair twice due to difficulty maneuvering his wheelchair on narrow sidewalks, and was forced to move. Ms. Ordonio's mother was unable to use her bathroom without assistance, which forced Ms. Ordonio to move her mother to a nursing home. Ms. Schlemmer fell many times due to difficulty walking and

maintaining her balance on the inaccessible routes through the subject property including the route from her unit to her parking area.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Regional Counsel, Region IX, and pursuant to Section 810(g)(2)(A) of the Act, hereby charges the Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. Section 3604(f), and prays that an order be issued, pursuant to Section 3612(g)(3), that:

1. Declares that the discriminatory housing practices of the Respondents as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. Section 3601 *et seq.*;
2. Enjoins Respondents, their agents, employees and successors, and all other persons in active concert or participation with any of them, from discriminating because of disability, against any person in any aspect of the purchase or rental of a dwelling;
3. Directs Respondents, their agents, employees and successors, and all other persons in active concert or participation with any of them, to bring the covered ground floor units as well as the public use and common use areas into compliance with 42 U.S.C. Section 3604 (f)(3)(C), including providing reasonable compensation to the owners and tenants of the subject property for inconvenience caused by, and other expenses related to, such retrofitting;
3. Awards such damages as will fully compensate Complainants, aggrieved persons, for their actual damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. Section 3604(f); and,
4. Awards a civil penalty against each Respondent for each violation of the Act committed, pursuant to 42 U.S.C. Section 3612(g)(3).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. Section 3612(g)(3).

Respectfully submitted,

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Date: _____

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